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Jo Shaw: Is Being 'Scottish' a Matter of Birth, Descent or Residence?

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Defining citizenship status and allocating citizenship rights would be an independent Scotland's 'Who Do We Think We Are?' moment, giving concrete form to the tricky question of 'who are the Scots?'. It would be one of the main prerogatives of a newly sovereign Scottish state to determine who are its citizens. Yet the questions of citizenship status and citizenship rights have received much less attention than many of the other issues which the prospect of independence raises, such as monetary matters and Scotland's economic prospects in a globalised world, defence and security, and pensions and the welfare state.

It has often been suggested that residence will be the defining qualification for those who will be the new Scottish citizens. But does that mean only resident UK citizens? Or what about those from other countries who are resident in Scotland, or were even born here but haven't acquired UK citizenship? There are nearly 300,000 people in this group. And then there is the large group of people born in Scotland who are no longer resident here. This group is perhaps as large as one million people, and that is a sizeable figure of potential so-called external citizens, when it is set against Scotland's current population of about 5.3m.

New states struggle with the challenge of putting the boundaries of citizenship in the right place. They want to balance territorial inclusion (i.e. the residence imperative) and ethnocultural inclusion (i.e. the imperative to include those who feel themselves to be Scottish), trying to find an outcome which is generally regarded as legitimate by those who are affected by the decision. Citizenship status will need to be settled quickly after any 'yes' vote, and before independence, not least because it will be an important stepping-stone to ascertaining who can vote in the first Scottish general election. But experience in other new states in Europe, such as those which were created out of the dissolution of Yugoslavia, has shown that internal debates over who should be a citizen and what rights they should have are unlikely to disappear after independence. These issues remain heavily contested. Political parties are lobbied by those who feel excluded because they are denied citizenship because their connection to the country isn't thought to be close enough. Electoral bargains are made. Rules are tinkered with. Sometimes the whole concept of who are the citizens is overturned by later action.

Scottish citizenship isn't only important for those who will become citizens at the moment of independence. Future generations will be concerned about whether and how they can become Scottish, by birth or by residence. They will want to know about Scotland's naturalisation processes, for example, and Scotland must decide whether it wants to take a different path to the UK, which has moved towards imposing quite high fees and conditions on those who want to become British. Scotland's Parliament might also choose to deny its Ministers the rather broad public interest-based powers to deprive citizens of their citizenship which exist nowadays in the UK, and which are being increasingly used rather like a form of modern banishment.

One of the most important hallmarks of citizenship is the right to vote. It is given to citizens, but not always only to citizens, and not always to all citizens. For example, those who are too young, or who are not resident in the country are often excluded. The question of 'who decides who are the citizens' shows us that citizenship and voting rights can end up in a vicious circle. The people who will decide the Scottish referendum on independence in September 2014 are the voting residents, the same people who can elect the Scottish Parliament (plus, of course, the 16 and 17 year olds included as a result of a historic decision to lower the voting age). This electorate includes Irish, Commonwealth and EU citizens, but excludes anyone with UK citizenship who is not resident here on polling day. But that doesn't settle the question of who votes in future general elections, because the constitutional platform which will be given the role of deciding such questions after a 'yes' vote might end up limiting the right to vote in Scottish elections only to those who take up Scottish citizenship. Or it might include also those people who keep British citizenship, or citizenship of the rest of the UK (rUK) as we might call it, and who decline to take up Scottish citizenship or at least to exercise a Scottish citizenship that will be conferred on them by the law. Or it might decide to include Commonwealth, but not EU citizens.

And the electoral roll might also include others who cannot vote in the referendum, such as citizens who have recently left Scotland. They could be given an external vote, perhaps for a limited time, mirroring the arrangements in the UK where expatriates can vote for up to fifteen years after leaving, in the last place where they were registered.

How these issues pan out will depend not only on the decision of the Scottish parliament or constitutional authorities on who can become a Scottish citizen, and on whether it is acceptable from Scotland's perspective for people to hold more than one citizenship, but also on decisions taken in London. For it is possible that the rUK may try to say – once Scotland has departed from the Union – that because Scottish citizenship is now open to the residents north of the border, that is what they must be. They cannot also, or instead, be British. This approach is not what the Scottish Government wants. It wants to see an open and inclusive approach tolerating widespread dual citizenship. It may not take a proactive approach to recruiting citizens, preferring a *laissez faire* approach which lets people gradually choose to act as Scottish citizens, once their passports run out and they realise that a Scottish one is cheaper. The Government also points to examples such as the UK and Ireland, where there is quite substantial overlap of citizenship, especially because of the special arrangements in Northern Ireland since the Good Friday Agreement. But even so, given the numbers involved, what the Scottish Government seems to envisage for Scotland seems to go beyond even this. Earlier in 2013 Home Secretary Theresa May reminded nationalist politicians that British citizenship is decided in London, not in Edinburgh.

And it is this dispute between Edinburgh and London which shows us how hard it is to fit citizenship into the standard story of independence as it is currently told. The Scottish Government's take on the journey towards independence and life after independence is one of persuading voters that they can enjoy an ideal of 'soft secession'. The residents of Scotland – whether they vote yes or no as individuals – can keep the Queen, the pound, and now – it would seem – their existing citizenship, whilst also gaining something new. This is probably what is meant by 'shared citizenship', an idea that the Scottish Government has mentioned on several occasions. But will the sharing be a two-way thing? The point of Theresa May's intervention on dual citizenship was to suggest the opposite. No, she is suggesting, citizenship is hard-edged, a matter of sovereignty – indeed 'our' sovereignty and not yours – and not a matter where secession can be treated as a 'soft' issue. You are in, or you are out. It was intended, of course, as a warning to wavering voters, and as an attempt to polarise the debate by reference to promised

conflicts.

There are pitfalls with all the possible approaches to new state citizenship which Scotland may take. More inclusive approaches risk uncertainty about who can vote in which elections, and could carve out large populations of external citizens and potential voters who could affect the stability of a new, rather small, Scotland. A substantial overlap of citizenship between Scotland and rUK might be thought of as interfering with the sovereignty of rUK. In addition, there may be other pitfalls – especially from an rUK perspective – if Scotland chooses to make a generous initial offer of citizenship to its lawfully resident settled non-citizens from EU and third countries, and this offer is widely taken up. The rUK may fear deflection effects from such an offer, with new and unwanted migration flows coming to rUK from Scotland in the form of new Scottish citizens. In the end, Scotland may have to choose a compromise between these various dimensions. It may be possible to discern a principled stance which sees generous offers made on the basis of both residence and descent, in both cases because Scotland can make a case for needing more citizens, whilst at the same time the same government tries to preserve the nestedness of Scotland and its citizenship within the wider framework of these islands by trying to push tolerance of dual citizenship on all sides. In the end, though, one aspect may need to be traded against the others and – given the increasing hostility to immigration in many parts of the UK at present – one can easily imagine that it would be the open offer to settled immigrants that would be the easiest element to sacrifice.

So, Scottish by birth, descent or residence? Or British? Or both. Perhaps. But in the event of a 'yes' vote, it may not even be Edinburgh which decides our citizenship fate.

Jo Shaw is Salvesen Professor of European Law at the University of Edinburgh. This post first appeared on the [Open Democracy](#) website and is based upon a longer report on [Citizenship in an Independent Scotland](#), drawing upon European Research Council funded research on [Citizenship in the Successor States of the Former Yugoslavia](#).

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